



NATIONAL MEDIATION BOARD

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40 NMB No. 44

March 22, 2013

Via Email

Anne Purcell
Associate General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Re: Bags, Inc.
NMB File No. CJ-7084

Dear Ms. Purcell:

This responds to your request for the National Mediation Board's (NMB) opinion regarding whether Bags, Inc. (Bags or Employer) is subject to the Railway Labor Act (RLA), 45 U.S.C. § 151, *et seq.* On December 11, 2012, the National Labor Relations Board (NLRB) requested an opinion regarding whether Bags' operations at the Seattle-Tacoma International Airport (SeaTac) in Seattle, Washington are subject to the RLA.

For the reasons discussed below, the NMB's opinion is that Bags' operations and its employees at SeaTac are not subject to the RLA.

I. PROCEDURAL BACKGROUND

This case arose out of an unfair labor practice charge (ULP) filed by Hosea Wilcox (Wilcox) on September 28, 2012 alleging that Bags discriminated against Wilcox by refusing to hire him based upon his union activities in violation of Section 8(a)(3) of the National Labor Relations Act. As part of the investigation, the NLRB's Region 19 (Region) obtained an affidavit from Wilcox. The Region also sought information from the Employer regarding the work performed by the employees, the merits of the ULP charge and the NLRB's jurisdiction. The Employer provided responsive documents including a copy of its contracts with Delta Airlines (Delta) and Alaska Airlines (Alaska) (collectively referred to as the Carriers).

On December 18, 2012, the NMB assigned Susanna F. Parker to investigate. The NMB provided the Employer and Wilcox an opportunity to submit position

statements regarding jurisdiction. Bags submitted a position statement on January 10, 2013. Wilcox did not file a position statement.

The NMB's opinion in this case is based upon the request and the case file provided by the NLRB, as well as the Employer's January 10, 2013 submission to the NMB.

II. BAGS' CONTENTIONS

Bags' contends that its operations are subject to the jurisdiction of the NMB under the RLA because the services it provides are duties traditionally performed by employees in the airline industry. Additionally, Bags asserts that its clients exercise substantial control over Bags' operations. According to Bags, this case is very similar to *PrimeFlight Aviation Servs., Inc.*, 34 NMB 175 (2007) where the NMB found that PrimeFlight's operations and its employees were subject to the RLA.

III. FINDINGS OF FACT

Bags' provides curbside skycap services, wheelchair services and unaccompanied minor services to Delta and Alaska under separate agreements at SeaTac. The Employer has had a skycap service contract with Alaska since 2009 and a wheelchair service contract with Alaska since 2010. The Employer won the Delta service contract in June 2012. The skycaps under the Delta agreement provide services only to Delta and the skycaps under the Alaska contract provide services only to Alaska. The wheelchair attendants were originally only providing services to the contract they were hired under, but Bags states that they are beginning to cross-train employees to provide services to both Carriers.

According to the Delta agreement, Bags' employees must perform services in compliance with Delta's standard practices, be professional, competent, and speak English sufficiently to perform the services. Delta has the right to fine Bags for performance issues per the agreement. According to the Alaska agreement, work is to be performed in conformance with industry practices. Both Carriers provide all training manuals and standard operation procedure manuals covering customer service, check-in standards, and dealing with disabled passengers.

Bags' provides disability and customer service training for all employees. Training is mandated by the Federal Aviation Administration (FAA) and the Carriers provide the pre-employment computerized skycap and wheelchair training, additional disability training, dangerous goods and hazmat, and additional customer service training. The Carriers also train a Bags employee to train other employees for its off-site check-in services. According to the

agreement, Delta has the right to inspect Bags' records to make sure that employees have completed all required training.

Both Carriers must approve Bags' employees' uniforms which have a Bags logo. According to the agreement, Alaska has the right to bar an employee from the airport if the employee is not in compliance with appearance, safety, or security standards. All Bags' employees wear Port of Seattle badges indicating Bags, Inc. as the employer.

Delta does not supervise Bags' employees; however, if Delta representatives see Bags' employees engaged in inappropriate behavior they can report such incidents to Bags. The agreement provides that Bags should be in continuous contact with Delta in order to advise it of emergencies, worker absences, accidents involving workers, or substandard performance of work. Additionally, Delta fines Bags for complaints, unattended passengers and passenger wait times. Bags' has a daily conference call with Delta managers to discuss wheelchair complaints and any other daily issues such as inadequate staffing. Under the agreement, Bags is to use "best efforts to follow any instructions provided by Delta's designated management representatives . . . regarding the standards, procedures, and practices to be followed in furnishing Services . . ." Darren Barton, Regional Director, West Coast Operations, Bags, Inc., testified that Delta is not involved in the disciplinary process and that "Delta cannot require that an employee be terminated or transferred from servicing the contract." Bags' determines what, if any, discipline should be enforced and any such discipline is not reported to Delta.

Alaska supervisors bring any issues with Bags' employees to Bags' attention immediately or to the bi-weekly meetings. Bags' also submits weekly reports to Alaska on all issues and accounting. Although Alaska tells Bags how to run operations if there are performance issues, final disciplinary determination is made by Bags.

Bags owns the baggage carts, handheld computer devices used by wheelchair operators to receive dispatches, furniture and punch clocks in both break rooms, two of the aisle wheelchairs used on the Delta planes, and computers used at the Alaska skycap curb check-in podium. Under the Delta agreement, Bags leases the wheelchairs used in the airport and the break room used by Bags' employees. The curbside skycap computers and curb podiums are owned by the airport and leased by Delta. Delta owns the bag tag printers and three of the aisle wheelchairs used on the planes. Pursuant to the Delta agreement, Bags must supply personal protective equipment for all employees in accordance with Delta's standards. Under the Alaska agreement, Alaska provides the break room for Bags' employees, the curbside check-in podium, curbside space, bag belt, wheelchairs, and electric carts for terminals.

Neither Carrier is involved in Bags' hiring process. Bags' is required to perform background checks, drug and alcohol testing, and licensing, and the Carriers have full access to review these records. Additionally, Bags determines all wages and benefits.

Delta does not approve scheduling, direct how staffing is to be scheduled, or approve overtime, however it does inform Bags if they believe the skycaps or wheelchairs are short-staffed. Bags' takes this information into account and adjusts the skycap schedules accordingly. Alaska determines the hours of operation and the number of employees needed per shift.

IV. DISCUSSION

Applicable Legal Standard

When an employer is not a rail or air carrier engaged in transportation of freight or passengers, the NMB applies a two-part test in determining whether the employer and its employees are subject to the RLA. *Air Serv. Corp.*, 39 NMB 450 (2012); *Talgo, Inc.*, 37 NMB 253 (2010); *Bradley Pacific Aviation, Inc.*, 34 NMB 119 (2007); *Dobbs Int'l Servs. d/b/a Gate Gourmet*, 34 NMB 97 (2007). First, the NMB determines whether the nature of the work is that traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *Talgo, above*; *Bradley Pacific Aviation, above*; *Dobbs Int'l Servs., above*.

Bags' does not fly aircraft and is not directly or indirectly owned by an air carrier. The services provided by Bags in this case, curbside skycap services, wheelchair services and unaccompanied minor services, are services traditionally performed by employees in the airline industry. *PrimeFlight Aviation Servs., Inc., above*; *Complete Skycap Servs., Inc.*, 31 NMB 1 (2003); *Avex Flight Support*, 30 NMB 355 (2003). Since Bags' SeaTac employees perform duties that have been traditionally performed by carrier employees, the first part of the NMB's jurisdictional test has been satisfied. Therefore, to determine whether Bags' SeaTac operations are subject to the RLA, the NMB must consider the degree of control exercised by the Carriers over Bags' SeaTac operations.

Carrier Control Over Bags and Its Employees at SeaTac

To determine whether there is carrier control over a company, the Board looks for evidence of whether a material degree of control exists between the carrier and the employer in question for the later to be deemed a carrier. The factors the NMB considers include: the extent of the carrier's control over the

manner in which the company conducts its business, access to the company's operations and records, the carrier's role in personnel decisions, the degree of supervision exercised by the carrier, the carrier's control over training and whether the employees in question are held out to the public as carrier employees. *Bradley Pacific Aviation, above; Dobbs Int'l Servs., above; Signature Flight Support/Aircraft Serv. Int'l., Inc.*, 32 NMB 30 (2004); *John Menzies PLC, d/b/a Ogden Ground Servs., Inc.*, 30 NMB 405 (2003).

For the reasons discussed below, the record in the instant case does not establish that the Carriers exercise substantial control over Bags' SeaTac operations to support a finding of jurisdiction. Bags' has a contractual relationship with Delta and Alaska at SeaTac. Therefore, as discussed above, the agreements dictate certain standards that Bags' employees should follow in performing services for the Carriers.

Bags' provides disability and customer service training for all employees and Carrier representatives train a Bags employee to train other Bags employees on off-site check-in procedures only. Although the Carriers provide all additional training, the training provided is required by the FAA. This type of control is insufficient by itself to bring Bags' SeaTac operations under the RLA.

Bags' provides uniforms to its employees and the uniforms have Bags' logo. The contracts between the Carriers and Bags stipulate personal appearance standards and the Carriers must approve Bags' employees' uniforms but they are not held out to the public as Carrier employees.

Bags' hires its own employees. Although Bags investigates complaints raised by the Carriers, ultimately Bags determines what, if any, discipline is necessary. The Carriers do not exert significant influence over hiring, promotion, discipline or discharge. In contrast to the instant case, in *PrimeFlight Aviation Servs., Inc.*, 34 NMB 175 (2007), the NMB found substantial control where PrimeFlight provided evidence that it complied with carrier requests to transfer and discipline employees. Similarly, in *Signature Flight Support/Aircraft Serv. Int'l., Inc.*, *above*, the NMB found substantial control where the company provided evidence that it terminated a ground service employee after a carrier requested that he be removed from the ramp. The NMB also found substantial control in *Air Serv. Corp.*, 33 NMB 272 (2006), where Air Serv provided the NMB with evidence of several occasions where it complied with carrier requests regarding employee discipline or assignments and the carrier's flight attendants had the authority to instruct the company's employees. This is not true in the instant case.

The Carriers provide some equipment to Bags. For example, Delta provides the curbside skycap computers, bag tag printers, curb podium, and three of the aisle wheelchairs used on the planes. Pursuant to the Delta agreement,

Bags leases the wheelchairs used in the airport and the break room used by Bags' employees. Alaska provides the break room for Bags' employees, the curbside check-in podium, curbside space, bag belt, wheelchairs, and electric carts for terminals. In this case, the space and equipment provided by the Carriers is insufficient to establish jurisdictional control without additional evidence of material control by a carrier.

The overall staffing and hours worked by Bags' employees was determined by the initial bid made by Bags and the Carriers' daily schedules dictate the staffing levels and shift assignments of Bags' employees. As noted above, Bags has a contractual relationship with Delta and Alaska at SeaTac to provide services, therefore, it is expected that Carriers will outline what services are necessary. Bags provided insufficient evidence that the Carriers have sufficient control over labor relations to find RLA jurisdiction.

The Carriers do not have significant control over the hiring, firing, and discipline of Bags' employees. Although Carrier representatives can provide input on disciplinary matters, Bags makes all final decisions. As described above, the type of control exercised by the Carriers over Bags is found in almost any contract between a service provider and a customer. However, it is not the type of meaningful control over personnel decisions to warrant RLA jurisdiction. *See, e.g. Aero Port Servs., Inc.*, 40 NMB 139 (2013).

V. CONCLUSION

Based on the record in this case and for the reasons discussed above, the NMB's opinion is that Bags, Inc. and its employees at SeaTac are not subject to the RLA. This decision may be cited as *Bags, Inc.*, 40 NMB 44 (2013).

By direction of the NATIONAL MEDIATION BOARD.



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